

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 23, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-0503-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RANDY JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County:
JAMES A. WENDLAND, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Randy Johnson appeals his conviction for manufacturing and delivering marijuana, as a party to the crime and habitual criminal, having pleaded no contest to the charge. The trial court sentenced Johnson to a four-year prison term, disregarding the parties' plea agreement seeking a withheld sentence, a one-year probation term, and a six-month driver's

license revocation. Before sentencing, the trial court examined local court records to verify some of the material contained in Johnson's presentence report. On appeal, Johnson argues that the trial court erroneously exercised its discretion and violated due process by examining the local court records and taking judicial notice of their contents. In his view, the trial court should not have considered information outside the evidence formally presented during the trial court proceedings. He fears that he has no way to know whether the trial court secretly relied on possibly erroneous information in those court files. We reject Johnson's arguments and therefore affirm his conviction.

Due process required the trial court to sentence Johnson on the basis of correct information. *See State v. Skaff*, 152 Wis.2d 48, 54, 447 N.W.2d 84, 86 (Ct. App. 1989). Due process also guaranteed Johnson fair notice and hearing. *See Riemer v. Riemer*, 85 Wis.2d 375, 377, 270 N.W.2d 93, 95 (Ct. App. 1978). While the trial court's sentencing determination is discretionary, *see State v. Macemon*, 113 Wis.2d 662, 667-68, 335 N.W.2d 492, 405-06 (1983), it must have a reasonable basis in the record and demonstrate a logical process of reasoning applying the proper legal standards to the relevant facts. *See McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519-20 (1971). The trial court must consider the gravity of the offense, the protection of the public, the rehabilitative needs of the defendant, the interests of deterrence, and all facts that could be relevant to these factors. *See State v. Sarabia*, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). For the following reasons, Johnson has not shown that the trial court's review of local court files deprived him of his rights at sentencing.

First, Johnson's PSI referred to his other cases and incidents; these were relevant to his sentence, and this furnished him adequate notice that the trial court might examine his files. Second, the supreme court has never found

anything inherently wrong with such trial court reviews of its own readily available records. *See, e.g., Harms v. State*, 36 Wis.2d 282, 283-84, 153 N.W.2d 78, 79 (1967). Third, the trial court informed Johnson of what it had found, and Johnson offered no refutation of any kind or degree; if the trial court made any significant errors, Johnson could have attempted to correct them then. Fourth, the trial court's findings contain no indication that it secretly considered erroneous information; Johnson's fear to the contrary is speculation. Last, we see no indication that any particular fact in the court files had a material, independent role in the sentence. The trial court referred to Johnson's record in its cumulative aspects, to help expose his overall character and put his new crime in historical context. In the end, the trial court sentenced Johnson for his current wrongdoing, not the specific circumstances of past crimes. In sum, the trial court honored Johnson's due process right to a sentence based on accurate information and correctly exercised its sentencing discretion.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

